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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,505	04/01/2004	Richard Kunkel	42526-3700	8620
21611	7590	04/11/2006	EXAMINER	
SNELL & WILMER LLP 600 ANTON BOULEVARD SUITE 1400 COSTA MESA, CA 92626			FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/816,505	<b>Applicant(s)</b> KUNKEL, RICHARD	
	<b>Examiner</b> Robert M. Fetsuga	<b>Art Unit</b> 3751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/23/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. The disclosure is objected to because of the following informalities: Paragraph 0023, line 2, "2" apparently should be --42--.

Appropriate correction is required.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "mouth", "top", "bottom", "walls", "water inlet" and "water outlet" set forth in claim 1, "baffle" set forth in claims 2 and 12, subject matter set forth in claims 4, 7 and 9, and "permanently fastened" feature set forth in claim 10, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

3. Claim 1, and any claims dependent therefrom, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear as to whether the "container" is intended to be part of the claimed combination since structure of the "waterfall" is defined as being connected thereto (ln.

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3), but no positive structural antecedent basis therefor has been defined.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruthenberg.

The Ruthenberg reference (Fig. 5) discloses a waterfall comprising: a spout 15; and a plenum chamber 20-26 including an inlet 17 and a baffle 29, as claimed.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg.

The choice of flow areas would appear obvious choices to be made to optimize performance.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg and Koren et al. '342.

Although the spout of the Ruthenberg waterfall does not include a light source, as claimed, attention is directed to the Koren et al. '342 ('342) reference which discloses an analogous waterfall which further includes a spout 22 having a light source 12. Therefore, in consideration of '342, it would have been obvious to one of ordinary skill in the waterfall art to associate a light source with the Ruthenberg spout in order to enhance appearance.

8. Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg and Simpson et al.

Although the spout of the Ruthenberg waterfall does not include a bezel, as claimed, attention is directed to the Simpson et al. (Simpson) reference (Figs. 7-9) which discloses an analogous waterfall which further includes a spout 88 having a bezel 90. Therefore, in consideration of Simpson, it would have been obvious to one of ordinary skill in the waterfall art to associate a bezel with the Ruthenberg spout in order to enhance use.

9. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg and '342 as applied to claim 5 above, and further in view of Simpson.


To associate a bezel with the Ruthenberg spout would have been obvious to one of ordinary skill in the art in consideration of Simpson analogous to the discussion supra.

10. Claims 1, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg and Koren et al. '100.

Although the inlet of the Ruthenberg waterfall is not a separate inlet structure, as disclosed, attention is directed to the Koren et al. '100 ('100) reference which discloses an analogous waterfall which further includes an inlet 14 having a separate inlet structure 25. Therefore, in consideration of '100, it would have been obvious to one of ordinary skill in the waterfall art to associate a separate inlet structure with the Ruthenberg inlet in order to facilitate assembly.

11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

  
Robert M. Fetsuga  
Primary Examiner  
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